

Office of Cable Television & Telecommunications



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Cable Television in the District of Columbia Year 2000 Compliance Report

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Executive Director

Submitted to:
Council of the District of Columbia
Committee on Economic Development
Councilmember Harold Brazil, Chairman

May 24, 2001

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PART I

INTRODUCTION

PURPOSE

Pursuant to D.C. Code Section 43-1806(d)(9), the Office of Cable Television & Telecommunications (OCTT) is required to submit an annual report to the Council of the District of Columbia (Council), showing, but not limited to, an account of cable franchise fees collected, review of any plans submitted during the year for development of new services, and compliance with the District Cable Act and franchise agreements. The Year 2000 Compliance Report on Cable Television in the District of Columbia (Report) is prepared covering the District's two multi-channel cable service providers, Comcast of the District (Comcast), and Starpower Communications, LLC (Starpower). Neither of the District's two cable service providers submitted any new plans in Year 2000, therefore, the Report focuses on the other three major aspects of cable television regulation: compliance with relevant provisions of the District's Cable Act; compliance with the Cable Franchise Agreement or Open Video Systems Agreement; and an account of franchise fees received from cable service providers.

BACKGROUND

On March 14, 1985, the Council granted a 15-year cable television franchise to District Cablevision Limited Partnership (DCLP). DCLP consisted of District Cablevision, Inc. (DCI) which had a 25% interest in the cable system, and TeleCommunications, Inc. (TCI) which had a 75% interest. In 1998, the Council approved a transfer of TCI's interest to AT&T, making it a 75% owner of the franchise. In 1999, the Council approved a transfer of DCI's interest to AT&T, effectively making AT&T the sole owner of the franchise. And in December 2000, Comcast applied for a transfer of the franchise from AT&T to Comcast of the District. As part of the transfer review, the District determined that the transfer application presented an opportunity to settle longstanding performance disputes and initiated a settlement with DCLP and AT&T. After a long negotiation, AT&T offered and the District accepted an offer of \$5 million to settle certain outstanding noncompliance issues alleged by the District against DCLP. (SEE Appendix A)

On December 12, 2000, the Council passed D.C. Act 13-503, Approval of the Application for Transfer of the Franchise and the Cable Television System of District Cablevision Limited Partnership from AT&T Broadband, LLC to Comcast Cablevision, LLC Emergency Act of 2000. The bill included a \$5 million dollar settlement for alleged franchise compliance and performance deficiencies including, but not limited to the failure to complete a system upgrade; failure to construct the institutional network (I-Net); non-compliance with minority hiring and contracting provisions; and multiple customer service violations. The

Transfer Agreement mandated Comcast to submit a written plan detailing the steps to improve customer service - one of the most prominent deficiencies alleged against District Cablevision before the transfer. Comcast submitted the written plan on January 30, 2001.

In addition to operations provided by District Cablevision (Comcast), on October 26, 1998, the District entered into a one-year agreement with Starpower to provide cable operations in the District. The agreement was pursuant to Section 653 of the federal Telecommunications Act (47 U.S.C. 573), which created the Open Video System (OVS) to allow cable operations without obtaining a franchise from the local authority. This was done to allow and encourage competition in the cable industry. A franchise is not required under the OVS rules; nevertheless, a prospective cable operator using the OVS option must negotiate with the local authority, issues similar to those that would be negotiated for a franchise.

In 2000, the actual number of households subscribing to cable service is less than 50% of the total serviceable households. This percentage or rate is referred to as the penetration rate.

As of the time of this Report, OCTT is actively negotiating new franchise agreements with Comcast and Starpower. In addition, OCTT is working on aligning the District's Cable Act with recent technological advancements and the challenges presented by the new competition in the cable industry. This will render the District's Cable Act consistent with federal laws need District Residents and needs.



PART II COMCAST

Ownership

Comcast of the South, which is owned by Comcast Cable Corporation, owns Comcast of the District. Formed in 1963, Comcast Cable has grown from a single system cable operation into the third largest provider of cable services in the country. Through a series of swaps with other cable companies, Comcast has the controlling market share in the eastern seaboard.

System Characteristics

The construction of the cable system that was transferred to Comcast by DCLP, began in May 1986, and was reported by DCLP to have been completed on May 22, 1991. The system is capable of providing subscribers with up to 111 channels of video programming; however, the cable franchise agreement requires that this capacity be increased when the technology to do so is feasible and economical. The cable service is marketed in two analog tiers plus a digital tier, the Basic Services Tier offering 24 channels of service, Expanded Basic Services Tier offering 32 channels of service, the digital basic offering 35 channel, and the digital music offering 30 channels. Other services available to cable subscribers include premium and pay-per-view channels, for which there are separate charges. The current average monthly charge per subscriber is approximately \$47.50. It generates roughly \$60 million in revenue annually from cable services and has approximately over 108,000 subscribers. The cable system in the District now consists of over 1,100 miles of cable plant with over 25 miles of fiber optics. Service is available to more than 300,000 households as potential subscribers. Multi-dwelling units, which include households with more than four (4) units, comprised sixty percent (60%) of the District's marketable households. DCLP began rebuilding the cable system in 1999 to provide more channel capacity and other cable related services. The rebuild project anticipates completion in 2002.

Status of the Cable Franchise Agreement

On March 14, 2000, the Cable Franchise Agreement (CFA) between the District and DCLP expired. Subsequent to the expiration, the Council approved two extensions to allow time for renewal negotiations. The negotiations for a new franchise with Comcast are underway and expected to conclude by August 2001. It is anticipated that the new CFA will become effective in March 2002.

Office Location in the District

900 Michigan Avenue, NE
Washington, DC 20017

Table I. Comcast: Compliance with the Cable Franchise Agreement

Table I. Comcast:
Compliance with
the CFA

CABLE FRANCHISE AGREEMENT	COMPLIANCE
CFA § 3.3 Payment of franchise award fee	Complied
CFA § 3.4 Reimbursement of half of reasonable consultant fees regarding the analysis and resolution of disputes relative to the franchise.	In Compliance
CFA § 3.7 Indemnifying the District against any claims of damages resulting from failure to secure consent from owners of programs delivered by the franchisee	In Compliance
CFA § 3.8 Insurance regarding property damage, public liability, automobile liability and workers compensation.	In Compliance
CFA § 3.9 Deposit of \$500,000 in an escrow account in the name of the District with a bank within the District.	Complied
CFA § 3.10 Provisions governing the franchisee's occupancy and use of public ways for the construction of the system.	In Compliance
CFA § 3.11 Governing body of the franchise to comprise of at least 60% minority.	In Compliance

Table I. Comcast:
Compliance with
the CFA

CABLE FRANCHISE AGREEMENT	COMPLIANCE
CFA § 3.11.02/03 Transfer of ownership and control to require approval of the Council.	In Compliance
CFA § 3.13 Report, books, and records to be available for inspection during business hours.	In Compliance
CFA § 4.8 Cable facilities and office required being located in the District.	In Compliance
CFA § 5.1, 6.2 System upgrades requirements.	Not in Compliance*
CFA § 5.4 Requirements for electronic home shopping, mail, banking and other interactive services subject to their technical availability.	Partly in Compliance Comcast has been able to offer some interactive services such as pay-per- view and DMX music system. It has been unable to provide other online services contemplated by this provision.
CFA § 5.1; 5.6.01 Institutional network (I-Net) capacity to be provided on the network and installation of separate trunks for the I- Net wherever trunk for residential network is installed.	Not in Compliance*

Table I. Comcast:
Compliance with
the CFA

CABLE FRANCHISE AGREEMENT	COMPLIANCE
CFA § 5.8 Provision of emergency system override to allow the District to interrupt and cablecast simultaneous audio messages on all channels.	In Compliance
CFA § 5.10 Provision of parental lockboxes to enable parental control of channels.	In Compliance
CFA § 5.16 Requirements for customer services to include prompt maintenance response, convenient service center locations, 24-hour telephone complaint capacity, timely installations, procedures for complaints, and resolution of billing issues.	Not in Compliance*
CFA § 6.1 Designation and reservation of channels to be used for municipal and government purposes.	In Compliance
CFA § 6.2 Provision of broad and diverse programming.	In Compliance
CFA § 6.5 Provision of channel capacity for commercial use on non-discriminatory bases (leased access).	In Compliance
CFA § 7.2.10 Payment of the initial \$500,000 to support municipal programming.	Complied

Table I. Comcast:
Compliance with
the CFA

CABLE FRANCHISE AGREEMENT	COMPLIANCE
CFA § 7.2; 7.3.01; 8.8.05 Provision of channel capacity for public access.	In Compliance
CFA § 8.8.02; 12.1.01; 12.1.04; 12.6 Discrimination regarding employment, fees, contract, and accessibility prohibited.	In Compliance
CFA § 12.1 Provision against the use of customer information and to protect subscriber's right to privacy regarding personal information, viewing habits, and billing.	In Compliance
CFA § 4.2; 12.4 Provisions regarding the installation of cable services on Multi Dwelling Units (MDU).	In Compliance
CFA § 12.5 Submission of affirmative plan and report on the status of minority training to the Office of Human Rights.	Not in Compliance*
CFA § 12.5.01 Requirement for apprenticeship program to provide on-the-job training to District residents.	In Compliance
CFA § 12.7 Provisions requiring minority-contracting set-asides as if the franchise is a government agency.	In Compliance

Table I. Comcast:
Compliance with
the CFA

CABLE FRANCHISE AGREEMENT	COMPLIANCE
CFA § 12.8 Workforce composition to consist of not less than 51% of District residents.	Not in Compliance*

* These non-compliances as they relate to Year 2000 and prior, have been settled pursuant to the Settlement Agreement between the District, AT&T Broadband, LLC, and District Cablevision Limited Partnership during the transfer of the system to Comcast.

Table II. Comcast: Implementation of the Plan to Improve Customer Service

PLAN	IMPLEMENTATION STATUS
Hiring a Director of Customer Service, and two Customer Service Managers to ensure that operation procedures benefit the customers.	Completed
Doubling the call center staffing from 53 to 107.	Ongoing
Adding 23 service representatives to specifically handle calls generated by rebuild activities	Ongoing
Adding 40 technical personnel.	Ongoing
Relocating administrative offices to larger facility.	Yet to begin

Table III. Comcast: Compliance with the District Cable Act

Table III. Comcast Compliance with the Cable Act	DC CABLE ACT SECTION	STATUS
	43-1824(a) Payment of annual franchise fee equal to 5% of annual gross revenues or the amount established in the franchise agreement.	In Compliance
	43-1824(b) Filing of quarterly financial report.	In Compliance

Table III.
Comcast
Compliance
with the Cable
Act

DC CABLE ACT SECTION		STATUS
43-1825 Insurance		In Compliance
43-1826 Specifications regarding rates and service offering.		In Compliance
43-1826(1)(a) Publication of applicable fees and charges.		In Compliance
43-1827 Making available books and records for inspection and filing of schedule changes and subscriber policies with OCTT.		In Compliance
43-1829.1 Public access channels reservation and support.		In Compliance
43-1830(a) Construct, operate, and maintain system in compliance with DC and Federal laws.		Not in Compliance*
43-1830(b) Maintenance of office in the District accessible to the public during business hours and a facility for 24-hr. recording of complaints.		In Compliance
43-1832 Compliance with customer service standards.		Not in Compliance*

Table III.
Comcast
Compliance
with the Cable
Act

DC CABLE ACT SECTION	STATUS
43-1833 Installation of facilities.	In Compliance
43-1834 Submission of, and compliance with the construction and service schedules.	In Compliance
43-1841(f); 1-2501 <i>et seq.</i> Annual report to the Office of Human Rights on the status of training program and achievement of affirmative plans and minority employment and training goals.	Not In Compliance* As confirmed by the Office of Human Rights. This non-compliance is a violation subject to fines, enforceable by the Office of Human Rights, of up to \$1000 per day of violation

* These non-compliances as they relate to Year 2000 and prior, have been settled pursuant to the Settlement Agreement between the District, AT&T Broadband, LLC, and District Cablevision Limited Partnership during the transfer of the system to Comcast.

Table IV. Comcast: Gross Revenue and Franchise Fee

PERIOD	GROSS REVENUE	FRANCHISE FEE
1 st Quarter	\$15,788,298.85	\$789,414.94
2 nd Quarter	\$16,301,780.52	\$815,098.03
3 rd Quarter	\$15,216,274.02	\$760,813.73
4 th Quarter	\$15,623,836.82	\$781,191.84
TOTAL	\$62,930,190.21	\$3,146,518.54



PART III

STARPOWER

Ownership

Starpower is a joint venture between RCN Telecom Services of Washington, D.C. (RCN-DC), and Pepco Communications, LLC (PCLLC). RCN-DC is a wholly owned subsidiary of RCN Telecom Services of Pennsylvania, Inc. (RCN-PA). RCN-PA is a wholly owned subsidiary of RCN Corporation, a publicly traded Delaware corporation with its principal business office in New Jersey. Kiewit Telecom, Inc., (KTH) a Delaware corporation, currently owns a controlling interest in RCN Corporation. Kiewit Diversified Group, Inc., (KDG) a Delaware corporation, holds 90% ownership interest in KTH, and David C. McCourt owns 10% interest in KTH. KDG is a wholly owned subsidiary of Peter Kiewit Sons', Inc., (PKS), which is also a Delaware corporation. RCN-DC has no subsidiaries.

System Characteristics

Starpower began offering cable service, telephone long distance service, and Internet Access in the District in February 1999. Starpower has almost completed the construction of its system throughout the District. The system has a bandwidth capacity 860 MHz, which is capable of providing subscribers up to 140 channels of video programming. It offers 84 channels in its basic package, 19 digital channels and 30 music channels. Starpower also offers pay-per-view and several premium channels, for which there are separate charges. The current average monthly charge per subscriber is approximately \$41.35. Starpower has over 20,000 subscribers in the District.

Status of the Open Video System Agreement

The OVS agreement with Starpower was for a term of one year with an automatic one-year extension. On January 18, 2000, Starpower filed an application for a long-term cable franchise. In the interim, the OVS agreement extension commenced on December 10, 2000, with an expiration date of June 10, 2001. The long-term franchise is anticipated to become effective in May 2002.

Office Location in the District

1130 Connecticut Avenue, NW
Suite 400
Washington, DC 20036

Table V. Starpower: Compliance with the Open Video System Agreement

Table V. Starpower: Compliance with the OVS Agreement	OVS AGREEMENT SECTION	STATUS
	Sec. 1-14(b) Monthly reports regarding customer service, including phone calls management, installation, and subscriber count	Not In Compliance Starpower has been unable to provide a summary of customer complaints for the immediate past 12 months, except from January 2001. Starpower blames its inability to provide the information on the need to develop a system to separate cable related complaints from those of other services it provides. ¹
	Sec. 1.14(e) Provision of notice explaining prospective customer's privacy protection.	In Compliance
	Sec. 1-15(a) Provision against discrimination in employment.	In Compliance
	Sec. 1.15(b) Requirement for the development and maintain a plan for the recruitment, education, training, and employment of District residents regarding the construction, operation, maintenance, and upgrade of the OVS system.	Not In Compliance Starpower claims it has developed the parameters for an education and training program to prepare District residents for jobs with Starpower, but it does not have specific plan as required by the OVS agreement, and the parameters it claims to have developed has not been shared with OCTT or any known District agency, including the Department of Employment Services. ²

¹See Starpower Responses, Appendix 4, page 1

Table V.
Starpower:
Compliance with
the OVS
Agreement

OVS AGREEMENT SECTION	STATUS
Sec. 1-15(b)(i) Provision that portion of Starpower's workforce attributable to its operations in the District must consist of 18% of its multi-jurisdictional workforce, and that 80% of Starpower's District workforce must consist of at least 80% District residents.	Unable To Verify Starpower has not provided any verifiable information to determine its compliance with this provision. ³
Sec. 1-15(c)(i) Requirement for a first source employment agreement with DOES according to Mayor's Order 83-265; and for the submission of an annual Affirmative Action Plan.	Not In Compliance Starpower claims that its operations are privately funded; therefore, it is not bind by Mayor's Order 83-265. Starpower, however, ignores the fact that it is bound by Sec. 1-15(c) of the OVS agreement where Starpower voluntarily agreed to abide by the provisions of the Mayor's Order. ⁴
Sec. 1-15(c)(ii) Requirement for good faith effort to establish employment goals and timetables designed to achieve a rate of minority participation in Starpower's workforce equal to the District's rate of minority population.	Unable To Verify Starpower has not provided any verifiable information to determine its compliance with this provision. ⁵

² Starpower Responses, Appendix 4, pages 4, 5, and 7

³ Id., page 9

⁴ Id., page 6

⁵ Id., pages 4,5, 6 and 8

Table V.
Starpower:
Compliance with
the OVS
Agreement

OVS AGREEMENT SECTION		STATUS
Sec. 1-15(c)(iii) Provision requiring Starpower to use DOES Job Service as a primary source of referral for job applicants, trainees, and other workers.		Not In Compliance Starpower may have provided DOES with information regarding job vacancies; that, however, does not constitute compliance with the provision. ⁶
Sec. 1-15(c)(iii) Requirement for the submission within 90 days of the agreement, trade apprenticeship programs and for the inclusion of 51% District residents in Starpower's apprenticeship and training.		Not In Compliance ⁷
Sec. 1-15(c)(iv) Reporting to the Office of Human Rights, the status of its training programs and detailed analysis of Starpower's effort to achieve its minority hiring goals and timetables.		Not In Compliance ⁸
Sec. 1-16 Requirement for using LSDBE contractors and vendors.		In Compliance

⁶ Starpower Responses, Appendix 4, page 7

⁷ Id., page 12

⁸ Id., page 11

Table V.
Starpower:
Compliance with
the OVS
Agreement

OVS AGREEMENT SECTION		STATUS
Sec. 1-16 Requirement for the submission of a plan to the District's Department of Human Rights regarding Starpower's compliance with LSDBE contracting requirements.		Not In Compliance⁹

Table VI. Starpower: Compliance with the District Cable Act

Table VI.
Starpower:
Compliance with
the Cable Act

DC CABLE ACT SECTION		STATUS
43-1824(a) Payment of annual franchise fee equal to 5% of annual gross revenues or the amount established in the franchise agreement.		In Compliance
43-1824(b) Filing of quarterly financial report.		In Compliance
43-1825 Insurance		In Compliance
43-1826 Specifications regarding rates and service offering.		In Compliance
43-1826(1)(a)		In Compliance

⁹ Starpower Responses, Appendix 4, page 4

Table VI.
Starpower:
Compliance with
the Cable Act

DC CABLE ACT SECTION		STATUS
Publication of applicable fees and charges.		
43-1827 Making available books and records for inspection and filing of schedule changes and subscriber policies with OCTT.		In Compliance
43-1829.1 Public access channels reservation and support.		In Compliance
43-1830(a) Construct, operate, and maintain system in compliance with DC and Federal laws.		In Compliance
43-1830(b) Maintenance of office in the District accessible to the public during business hours and a facility for 24-hr. recording of complaints.		In Compliance
43-1830(d) Simultaneous submission to OCTT, of copies of documents submitted to federal or District agencies.		In Compliance

Table VI.
Starpower:
Compliance with
the Cable Act

DC CABLE ACT SECTION		STATUS
43-1832 Compliance with customer service standards.		Not In Compliance Starpower has been unable to provide precisely the number of video complaints by subscribers in the District, nature of complaints and resolutions. Further, Starpower has failed to maintain adequate telephone operation to handle customer calls.
43-1833 Installation of facilities.		In Compliance
43-1834 Submission of, and compliance with the construction and service schedules.		In Compliance
43-1841(f); 1-2501 <i>et seq.</i> Annual report to the Office of Human Rights on the status of training program and achievement of affirmative plans and minority employment and training goals.		Not In Compliance As confirmed by the Office of Human Rights. This non-compliance is a violation subject to fines, enforceable by the Office of Human Rights, of up to \$1000 per day of violation. ¹⁰

¹⁰ Notice of Failure to Comply to Starpower and Letter to the Department of Human Rights, Appendix 4

Table VII. Starpower: Gross Revenue and Franchise Fee

PERIOD	GROSS REVENUE	FRANCHISE FEE
1 st Quarter	\$959,896.99	\$47,994.81
2 nd Quarter	\$1,356,195.31	\$67,809.77
3 rd Quarter	\$1,653,776.99	\$82,688.85
4 th Quarter	\$2,060,591.20	\$103,029.56
TOTAL	\$6,030,460.49	\$301,522.99

PART IV

APPENDIX

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